

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

MICHAEL ESPINOSA,

Plaintiff,

v.

STEVENS TANKER DIVISION, LLC,

Defendant.

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Civil Action No. 5:15-cv-879

DEFENDANT’S MOTION FOR THE COURT TO RECONSIDER THE  
TEXT ORDER OF MARCH 29, 2017 REGARDING BRIEFING ON  
PLAINTIFF’S MOTION TO DECERTIFY CONDITIONAL CLASS

Comes now, Defendant Stevens Tanker Division, LLC (“Defendant” or “Tanker Division”) and files this Motion for the Court to Reconsider the Texas Order of March 29, 2017 Regarding Briefing on Plaintiff’s Motion to Decertify Conditional Class (“Motion to Decertify”) (Doc 91). In support hereof, Defendant would respectfully show the Court as follows:

1. Attached as Exhibit “A” is a copy of the Text Order this Court entered on March 29, 2017 at 3:35 PM CDT. Defendant requests the Court to reconsider its order that Defendant provide briefing on the specified issues prior to Plaintiff, the moving party, for the following reasons.

2. Defendant’s Response to Plaintiff’s Motion to Decertify (Doc 91) is due April 4, 2017, and Defendant is preparing a response based on the matters stated and issues raised in the motion. Defendant opposes the motion, and will set forth the reasons in the response, and believes that not only is the motion not ripe for decision, as Defendant will show, the motion is unsupported and should be denied.

3. The issues which the Court is requesting Defendant brief first are issues that should be addressed by the Plaintiff, the moving party, so that the Plaintiff, and Plaintiff's counsel, can inform the Court as to the Plaintiff's and Plaintiff counsel's intentions regarding their desire to proceed as to the prosecution of the Plaintiff's and the opt-in's claims. What the Court is asking Defendant to do is to make those decisions for Plaintiff and Plaintiff's counsel. It should be Plaintiff's and Plaintiff's counsel obligation to inform the Court regarding those issues, and then Defendant should be permitted to respond. It would be manifestly unfair to Defendant to brief those issues first since Plaintiff has taken the unusual and we believe, unprecedented, move of moving to decertify a class on which Plaintiff produced sworn evidence that the movants were similarly situated and now are attempted to contradict such evidence on which this Court relied.

4. Defendant requests that the Court reconsider its Text Order, and permit Defendant to file its response to the present Motion to Decertify, and then require Plaintiff and Plaintiff's attorney to brief the issues referred to in the Text Order in Plaintiff's Reply, and permit Defendant to then respond to Plaintiff's Reply.

5. Defendant requests that the Court grant the request herein and for all other and appropriate relief to which Defendant is entitled.

Respectfully submitted,

KEY HARRINGTON BARNES, PC

BY: /s/ Stephen C. Key  
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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that a true and correct copy of the foregoing instrument was served upon all counsel of record in accordance with the Federal Rules of Civil Procedure, on the 29<sup>th</sup> day of March, 2017.

/s/ John L. Freeman

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**Date:** Wednesday, March 29, 2017 3:36:47 PM

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**U.S. District Court [LIVE]**

**Western District of Texas**

### **Notice of Electronic Filing**

The following transaction was entered on 3/29/2017 at 3:35 PM CDT and filed on 3/29/2017

**Case Name:** Michael Espinosa v. Stevens Tanker Division, LLC

**Case Number:** 5:15-cv-00879-XR

**Filer:**

**Document Number:** No document attached

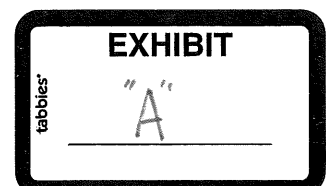
#### **Docket Text:**

**Text Order TAKING UNDER ADVISEMENT [91] Motion to Decertify entered by Judge Xavier Rodriguez. The Court directs the parties to brief the effect of decertifying a conditional class. The parties are to address the status of the opt-in plaintiffs should the Court decertify the class whether the claims of the opt-in plaintiffs will be dismissed and they will lose all status as parties in this case or whether they will remain in this case as individual plaintiffs. To the extent that the opt-in plaintiffs claims will be dismissed, the parties are to address whether future actions would be barred by limitations. Defendant may brief these issues in its response to the motion to decertify, which is due on April 4, 2017. Plaintiff may brief these issues in a reply with respect to that same motion, which is due on the deadline set forth in the Local Rules. (This is a text-only entry generated by the court. There is no document associated with this entry.) (pp)**

**5:15-cv-00879-XR Notice has been electronically mailed to:**

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